

SENATE BILL REPORT

SHB 1897

As Reported By Senate Committee On:
Government Operations & Elections, March 29, 2007

Title: An act relating to disclosure of attorney invoices.

Brief Description: Expressing the legislature's intent that public disclosure requirements do not allow attorney invoices to be exempt in their entirety.

Sponsors: House Committee on State Government & Tribal Affairs (originally sponsored by Representatives Williams and Hunt).

Brief History: Passed House: 3/13/07, 94-2.

Committee Activity: Government Operations & Elections: 3/27/07, 3/29/07 [DP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach, Ranking Minority Member; Benton, Kline, Pridemore and Swecker.

Staff: Sharon Swanson (786-7447)

Background: The Public Records Act (Act) requires that all state and local government agencies make all public records available for public disclosure unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally and the exemptions narrowly in order to effectuate a general policy favoring disclosure.

Records that are relevant to a controversy to which an agency is a party that would not be discoverable to another party under the superior court rules of pretrial discovery are exempt from disclosure under the Act. Specifically exempt from disclosure is an attorney's work product. The definition of work product includes "factual information which is collected or gathered by an attorney, as well as the attorney's legal research, theories, opinions, and conclusions." *Limstrom v. Ladenburg*, 136 Wn.2d 595 (1998). The attorney-client privilege also exempts certain public records from disclosure. The attorney-client privilege, however, is a narrow privilege and protects only "communication or advice between attorney and client in the course of the attorney's professional employment." *Hangartner v. City of Seattle*, 151 Wn.2d 439 (2004).

Summary of Substitute Bill: The Legislature intends to clarify that the public's interest in open, accountable government includes an accounting of any expenditures of public resources

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upon private legal counsel or private consultants. It is the intent of the Legislature to clarify that no reasonable construction of the Act has ever allowed attorney invoices to be withheld in their entirety by a public entity. It is further the intent of the Legislature that specific descriptions of work performed be redacted only if they would reveal an attorney's mental impressions, actual legal advice, theories, opinion, or are otherwise exempt under this act or other laws. The burden is on the public entity to justify each redaction and narrowly construe any exception to full disclosure.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Public disclosure is rather meaningless if the huge costs of tortious actions by public officials and government actors are not disclosable. The bill is an attempt to clarify our state's public records act. The citizen's of this state have already resoundingly stated that public records should be open through Initiative 276. The costs and description of the costs need to be released to the public. That revelation might assist in deterring wrong acts by public officials. The monorail project had significant legal costs attached that were released on a redacted invoice. All of the costs of tortious conduct by government actors and public officials should be made available to the public in an effort to deter that conduct. This bill has \$6 million reasons for supporting it. That is the amount of money that has been spent on sexual harassment and discrimination suits brought against the local prosecutors office. The settlement was \$1.45 million, the rest is attorney's fees. That is the largest settlement made by the county risk pool. The citizens of this county should be able to decide whether or not a sufficient offer was made to those women prior to trial. The offer was \$450,000 – not the \$1.45 million awarded at trial. The cost will continue to rise as this case goes through the appeals process. Allowing the public to see redacted invoices will allow a chance to review to determine if the public's money is being well spent. What work is being done? It is not necessary to disclose attorney work product to release an invoice detailing the work that has been done.

CON: Attorney invoices are not exempt from public disclosure. To the extent that the Legislature would like to adopt an expression of legislative intent it should be done within the confines of existing law. The bill states that attorney work product would not be disclosable through the invoices but there should be additional examples provided in the bill to make it clear that attorney client privilege and work product can be redacted when these documents are released. There is substantial information in attorney billing statements. A description of what legal services have been performed such as witnesses being contemplated, time spent in telephone discussions, etc. The oath of the attorney requires that an attorney maintain the confidence and preserve in violet the secrets of my client. That is a confidence that is kept to the benefit of the client, not the attorney. Public entities have the right to depend on the attorney client privilege just as any other client would. The language of the bill that is before the committee provides a limited array of subjects that are available for redaction. The next sentence of the bill states that public entity must narrowly construe any exception to full

disclosure. That puts attorney client privilege into a second tier position relative to import as it pertains to public disclosure. This could work in a plaintiff context as well.

Persons Testifying: PRO: Representative Williams, prime sponsor; Greg Overstreet, Office of the Attorney General; Rowland Thompson, Allied Daily Newspapers.

CON: Mel Sorensen, Washington Defense Trial Lawyers; Charlie Brown, Puget Sound School Coalition.